

REMARKS

Claims 1-9, 16-19, 23, 24, 26, 27, 29-38, and 40-43 were pending in the present application. By this response, claim 35 has been cancelled, and claims 1, 3, 16, 17, 24, and 31 have been amended. Accordingly, claims 1-9, 16-19, 23, 24, 26, 27, 29-34, 36-38, and 40-43 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added.

Rejections under 35 U.S.C. §102(b)

All pending claims were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Moll (U.S. Patent No. 5,305,121).

In response, claim 1 has been amended to recite that the apparatus includes a flexible elongate body and “at least two working lumens extending through the flexible elongate body.” The claim further recites an articulating element that is “pivotally connected to the elongate body near or at its distal region by at least one linkage member and at least one hinge.” The former limitations are supported in the specification at several locations including, for example, at paragraphs 0010, 0027, and 0037, and at FIGS. 1A-E, 2, 3A-E, and 4. The latter limitations are also supported throughout the specification including, for example, at paragraphs 0027 and 0037, and at FIGS. 1A-E, 2, 3A-E, and 4.

These limitations reflect some of the significant differences between the device described and claimed in the present application and the device described in the Moll patent. Moll’s device is an endoscope that is typically used in conventional, multiple port laparoscopic procedures. (See Moll, col. 1, ll. 11-34). Accordingly, the Moll endoscope is limited in its function to simply providing stereoscopic viewing. It is not intended to provide access for additional tools or procedures, which is instead provided by “other punctures” in “other locations” for insertion of “other endoscopic instruments.” (Col. 4, ll. 53-68). On the other hand, the device described and claimed in the present application includes an articulating element – which, in some embodiments, includes a visualization element – but also includes a working lumen that “may be used for passage of diagnostic or therapeutic tools from the proximal to the distal region of apparatus 10, as well as to draw suction, inject fluids, etc.” (Spec., paragraph 0032).

Turning to the specific amendments to claim 1, the Moll patent describes a device having neither of the features that are the subject of the present amendments. Instead, in Moll, a pair of support rods 17a, 17b and an illumination bundle 20 extend through a sheath 12. A left camera 15a and a right camera 15b are mounted at the distal ends of the support rods. Although the sheath 12 can be said to define a lumen, the lumen is occupied by the illumination bundle 20 and the support rods 17a, 17b. There is no description of a second working lumen, nor would a second working lumen be compatible with the described endoscope. To the contrary, Moll states that the illumination bundle 20 “has a width only slightly less than the interior width of the sheath 12.” (Col. 2, ll. 33-35). For these reasons, the Moll patent does not anticipate claim 1. Moreover, the patent also suggests that the illumination bundle should have a cross-sectional area that is as large as possible in order to provide greater light intensity. (Col. 5, ll. 49-54). The Moll patent thus explicitly teaches away from the concept of providing at least two working lumens that extend through the sheath. Accordingly, there is no reason why a person skilled in the art would have considered it obvious to modify the Moll device to include a second working lumen, and therefore there is no basis for a contention that claim 1 would have been obvious.

In addition, the Moll patent does not describe an apparatus that includes an articulating element that is “pivotally connected to the elongate body near or at its distal region by at least one linkage member and at least one hinge.” The Office Action identifies the support rods 17a, 17b of the Moll device as corresponding to the claimed articulating element. In the Moll device, however, the support rods 17a, 17b are not “pivotally connected” to the elongate body “by at least one linkage and at least one hinge” at the location recited in the claims. Although the Examiner states (in the rejection of claim 24) that Moll’s “orientation knobs” 18a, 18b correspond with the claimed “links,” there is nothing in the Moll patent to support a contention that the Moll orientation knobs 18a, 18b connect the elongate body to the articulating element near or at the distal end of the elongate body. For this additional reason, the Moll patent does not anticipate claim 1.

Claims 2-9, 16-19, 23, 24, 26, 27, and 29-30 each depend from claim 1. As a result, these claims are not anticipated by the Moll patent for the same reasons set forth above.

Claim 31 has been amended to recite an additional method step of “passing a diagnostic or therapeutic tool through a working lumen provided in the elongate body.” These limitations are supported in the present specification at, for example, paragraphs 0032 and 0038 and FIGS. 1A-E and 3A-E. There is no corresponding step that is taught or disclosed in the Moll patent which, as

discussed above, is limited to providing stereoscopic visualization. Although the Examiner had rejected claim 35, which included a similar recitation, the office action did not identify any portion of the Moll patent that teaches this method step. The Office Action simply referred to Fig. 4 of the Moll patent, which does not provide the missing teaching. For this reason, claim 31 is not anticipated by the Moll patent.

Claims 32-38 and 40-43 each depend from claim 31. As a result, these claims are not anticipated by the Moll patent for the same reasons set forth above.

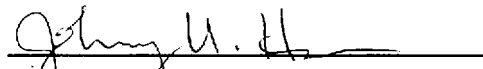
Finally, in the rejection of claims 26-27 in the pending Office Action, the Examiner stated that “Moll discloses an apparatus for obtaining endoluminal access, wherein the elongate body is steerable, rigidizable and has a steerable shaft (see Col. 6, lines 23-53).” Applicant respectfully disagrees with the Examiner’s characterization of the Moll patent. No teaching of a steerable shaft (or of a steerable or rigidizable body) is included in the portion of the Moll patent referenced in the Office Action, nor is there any teaching of the step of steering a steerable shaft. Accordingly, the rejections of these claims (as well as claim 43) should be withdrawn for this additional reason.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **USGINZ00700**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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